

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

FEENIX PAYMENT SYSTEMS, LLC  
and FEENIX VENTURE PARTNERS, LLC,

Plaintiffs,

V.

No. 2020-1519-MAK

STEEL CAPITAL MANAGEMENT, LLC,  
STEEL PAYMENTS, LLC, MICHAEL  
HOFFMAN, and MARC SEHGAL,

Defendants.

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' OBJECTIONS TO SPECIAL MASTER ORDER**

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Dated: August 26, 2021

Defendants Steel Capital Management, LLC, Steel Payments, LLC, Michael Hoffman, and Marc Sehgal (collectively, the “Steel Parties”), by and through their attorneys of record, respectfully submit this opposition to Plaintiffs Feenix Payment Systems, LLC’s and Feenix Venture Partners, LLC’s (collectively “Feenix” or “Plaintiffs”) objection (the “Objection”) to the Honorable Susan L. Robinson’s August 24, 2021 Special Master order (the “Order”). For at least three reasons, the Objection should be summarily denied.

Contrary to Feenix’s characterization of the Order as being based upon a “mistaken, foundational premise” that, in turn, was based on representations made by the Steel Parties in supplemental briefing before Judge Robinson,<sup>1</sup> it was anything but. In actuality, Judge Robinson reached her decision after full briefing on the motion, a lengthy oral argument, and four supplemental submissions by the parties.<sup>2</sup> As for the Steel Parties’ alleged statement, Feenix conspicuously elected not to attach the submission containing that statement. It is now attached as Exhibit A. The reason why Feenix omits it is clear – the representations in the Steel Parties’ supplemental response were attributed to a quote *by Feenix’s counsel* in which he identified the “origin story” as “the one definitive [category of documents] that we know we believe we’re entitled to.”<sup>3</sup> Not only that, Judge Robinson’s Order also is predicated upon extensive colloquy with counsel regarding this “one definitive” category of disputed documents.

Beyond mischaracterizing the “foundational premise” of Judge Robinson’s decision, Feenix’s motion also ignores the remainder of the discovery record that underpins Judge Robinson’s decision, including that the Steel Parties have produced “documents concerning the

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<sup>1</sup> Objection at 1, 4.

<sup>2</sup> The parties also provided Judge Robinson with the relevant correspondence from the parties’ meet-and-confer efforts concerning the then-pending motions to compel.

<sup>3</sup> Ex. A at 1. Attached as Exs. B and C are the two other supplemental submissions presented to Judge Robinson in advance of the Order.

creation, formation, development, and operation of Steel Capital . . . .”<sup>4</sup> As to Feenix, Judge Robinson found that “Plaintiffs have unduly delayed their production, using their disputes (never presented coherently) over a search protocol as a delay tactic rather than using the search protocol as a tool for expediting discovery.”<sup>5</sup> In sharp contrast, the Steel Parties have been completely transparent about their search process and production. Before Judge Robinson, the Steel Parties laid out in detail exactly what they have searched for and produced, including numerous categories of documents beyond the “origin story” documents that Feenix now seeks.<sup>6</sup> Among other things, the Steel Parties have produced their term sheets, non-disclosure agreements, merchant-servicing agreements, exclusivity agreements, operating agreements, organizational documents including organizational charts, business models, due diligence materials, and pitch book. They have also produced, to the extent they exist, any Feenix documents in their possession, as well as communications reflecting their use of Feenix materials, communications with Feenix portfolio companies, and text messages among Feenix’s principal, Keith Lee, and Messrs. Hoffman and Sehgal.<sup>7</sup> In short, Feenix has received what it now seeks and it did so before its motion to compel. Notably, at oral argument, it did not dispute the Steel Parties’ foregoing representations regarding their document production. And, as for the “origin story” documents ordered by Judge Robinson, to the extent they exist, those will be produced forthwith.

Accordingly, beyond its mischaracterizations of the record, Feenix provides no basis for overturning the Order. Not mistake, inadvertence, surprise, excusable neglect, newly discovered

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<sup>4</sup> Objections Ex. B at 1.

<sup>5</sup> D.I. 147 at 4.

<sup>6</sup> Ex. A (citing D.I. 121 at 2-3; August 19, 2021 Tran. 49:4-56:13).

<sup>7</sup> August 19, 2021 Tran. at 52:24-54:7.

evidence, misapplication of law – or any other basis for second guessing Judge Robinson’s well-reasoned decision based upon a full and robust record.

For the foregoing reasons, Plaintiffs’ Objections should be denied and the Special Master’s Order upheld.

DATED: August 26, 2021

Respectfully submitted,

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